IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 35 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

KRIKSHNA UNDERCASING MFG.,

Appearance:

1. INCOME TAX REFERENCE No. 35 of 1987
MR BB NAYAK FOR MR MANISH R BHATT for Appellant.
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 27/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

1 At the instance of the Revenue, the following question of law has been referred to us by the Income Tax Appellate Tribunal, Ahmedabad Bench "C" for our decision:

"Whether on the facts and in the circumstances of the case, the Tribunal is right in law in confirming the view taken by the AAC that the assessee is entitled to registration and the same cannot be refused on the ground that sole beneficiary of the trust was a minor ?"

2 The Reference arises from the Tribunal's judgment dated 23/6/1986 in ITA No.856/Ahd/85 in respect of the assessment year 1979-80.

3 The assessee was a partnership firm having two partners. During the assessment year in question there was a change in the constitution which was brought about through the deed dated 11.1.1978. As per the said deed one of the partners retired from 12/11/1977 and two persons were inducted as partners. One of them was Shri B.R.Bhavsar, trustee of Jintendra Benefit Trust. The Income Tax Officer held that since Jitendra, who was the sole beneficiary of the trust, was a minor and since under the Indian Partnership Act, a minor cannot become a partner, registration was refused to the assessee firm. The Appellate Assistant Commissioner, however, allowed the appeal and held that registration was required to be granted to the assessee firm. The Tribunal confirmed the said view, hence, the revenue moved for Reference of the above quoted question.

4 Mr.B.B.Nayak, learned Counsel for the Revenue submitted that when the provision of the Indian Partnership Act,1930 do not permit a minor to enter into a partnership agreement a firm with a minor partner cannot be granted registration under the Income Tax Act. Though served none appears for the respondent assessee.

5. The Tribunal has found that this was not a case where a minor simplicitor has becoming a partner of the firm. Here is a case where the minor was a beneficiary of the trust. The trustee being competent to make a contract, the trustee could also enter into partnership and such a partnership was validly constituted and registration cannot be refused only on the ground that the sole beneficiary of the trust happened to be a minor. The Tribunal specifically noted that in case the author of the trust has directed the trustee to enter into a

partnership it would be the duty of the trustee to obey the direction of the trust. The Tribunal also noted the provisions of section 11 of the Indian Trust Act,1896 that the trustee is bound to fulfill the purpose of the trust and obey the direction of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract. Section 11 further provides that when the beneficiary is incompetent to contract, his consent may for the purposes of this section, be given by a Principal Civil Court or original jurisdiction. The Tribunal also noted that the position may be otherwise in case the trustee is not authorised to enter into the partnership in accordance with the directions of the author of the trust deed.

6. Though the order of the Tribunal does not specifically state so, the Tribunal clearly proceeded on the footing that at the time of creation of the trust the author of the trust directed the trustee to enter into a partnership and therefore the trustee was merely obeying the direction of the author of the trust. In view of the aforesaid factual position and the provisions of Section 11 of the Indian Trust Act,1860 and also considering that there is no provision in the trust deed which prohibits the trustee of the trust (of which the minor is a beneficiary) from entering into a partnership, we find no error in the view taken by the Tribunal.

7. We accordingly answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

8. The Reference accordingly stands disposed of with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta, J)

m.m.bhatt